

I.Y., pro se, appeals several orders issued in conjunction with motions he filed involving the custody and support of his minor child, J.J. I.Y. presents the following restated issues for review:

1. Did the trial court err in refusing to modify custody of J.J.?
2. Did the trial court err in refusing I.Y.'s request to change J.J.'s surname?
3. Did the trial court err in refusing to reduce I.Y.'s support obligation?
4. Did the trial court err in refusing to order an accounting of the way in which the child support I.Y. paid was being spent?
5. Did the trial court err in ordering that I.Y. is solely responsible for transportation costs associated with his visitation?

We affirm.

The facts are that K.J. (Mother), J.J.'s biological mother, ran away from home in 2002 and met I.Y., with whom she had been communicating via the internet. Mother, who was seventeen at the time, returned three days later to the home of her parents. Mother discovered a short time later that she was pregnant. J.J. was born on May 3, 2003. On September 3, 2004, Mother filed a petition to establish paternity. In late 2004, Mother was found guilty of check deception and sentenced to prison. On December 23, 2004, the trial court granted an emergency petition for custody, awarding custody of J.J. to Mother's brother, T.J., and his wife, A.J. (the Custodians).

Thereafter, on July 28, 2005, J.J.'s paternity was established in I.Y, who was ordered to pay \$67.00 per week in child support and almost \$12,000.00 in child-birth and child-care expenses. The court also determined that I.Y.'s child support obligation would be retroactive to the date of the filing of the petition to establish paternity. The court ordered I.Y. to pay

\$10.00 per week toward the accumulated arrearage. Also on July 28, 2005, I.Y. filed a petition to gain custody of J.J., who was still residing in the home of the Custodians. Ultimately, in addition to the request for a change of custody, I.Y. asked that J.J.'s surname be changed to his, that the Custodians should provide an accounting of how they were spending the child support money he sent to them, that the Custodians should split the expenses incurred in transporting J.J. for visitation with I.Y., and that I.Y.'s child support obligation should be reduced. I.Y. appeals the trial court's adverse ruling on all of these requests.

We note at the outset that I.Y. is representing himself on appeal. “[O]ne who proceeds pro se is ‘held to the same established rules of procedure that a trained legal counsel is bound to follow’ and, therefore, must be prepared to accept the consequences of his or her action.” *Ramsey v. Review Bd. of Indiana Dept. of Workforce Dev.*, 789 N.E.2d 486, 487 (Ind. Ct. App. 2003) (quoting *Mullis v. Martin*, 615 N.E.2d 498, 500 (Ind. Ct. App. 1993)). While we prefer to decide cases on the merits, we may deem alleged errors waived where an appellant's noncompliance with the rules of appellate procedure is “‘so substantial it impedes our appellate consideration of the errors.’” *Id.* (quoting *Mullis v. Martin*, 615 N.E.2d at 500). The appellate rules serve to aid and expedite review and to relieve us of the burden of searching the record and briefing the case. “‘We will not become an advocate for a party, nor will we address arguments which are either inappropriate, too poorly developed or improperly expressed to be understood.’” *Id.* (quoting *Terpstra v. Farmers & Merchants Bank*, 483 N.E.2d 749, 754 (Ind. Ct. App. 1985), *trans. denied*).

I.Y.'s entire argument on all five issues consists of a single paragraph comprised of

general statements of opinion and belief, and is entirely devoid not only of citations to authority, but also of anything that resembles a legal argument.

“A party generally waives any issue for which it fails to develop a cogent argument or support with adequate citation to authority and portions of the record.” *Carter v. Indianapolis Power & Light Co.*, 837 N.E.2d 509, 514 (Ind. Ct. App. 2005) (quoting *Romine v. Gagle*, 782 N.E.2d 369, 386 (Ind. Ct. App. 2003), *trans. denied*), *trans. denied*. For such utter noncompliance with the appellate rules, I.Y. has waived the issues he presents. Because of the importance of the issues presented and their impact upon J.J., however, we will briefly address them in turn.

1.

I.Y. contends the trial court erred in denying his request to have physical custody of J.J.

Child custody determinations are committed to the trial court’s discretion and will not be disturbed except for an abuse of discretion. *Blasius v. Wilhoff*, 863 N.E.2d 1223 (Ind. Ct. App. 2007), *trans. denied*. We will not reverse a custody decision unless it is against the logic and effect of the facts and circumstances before the trial court or the reasonable inferences drawn therefrom. *Id.*

James Painter was appointed as J.J.’s CASA and submitted a report to the court in conjunction with this case. He reported that J.J. was happy and well cared for in the Custodians’ home. There, J.J. is cared for by her aunt and uncle and enjoys playing with her cousins. When asked why he wanted custody of J.J., I.Y. answered that it was for her safety, well-being, and education. Yet, his plans for J.J. were “vague and showed little thought.”

Appellant's Appendix at 50. The record indicates that I.Y. was unemployed and there was “little connection” between I.Y. and J.J. *Id.* at 50. After interviewing all of the principals and reviewing the situation, Painter concluded that it was in J.J.’s best interest to remain in the custody of the Custodians. This decision was not an abuse of discretion.

2.

I.Y. contends the trial court erred in denying his request to have J.J.’s surname changed.

As a biological father seeking to obtain the name change of his nonmarital child, I.Y. bore the burden of persuading the trial court that the change is in J.J.’s best interest. *Paternity of Tibbitts*, 668 N.E.2d 1266 (Ind. Ct. App. 1996), *trans. denied*. Absent such evidence, the father is not entitled to obtain a name change. *Id.* When a surname change is sought in a paternity action, the trial court may consider, among other things, whether the child is identified by public and private entities and community members by a particular name, the degree of confusion likely to be occasioned by a name change, and (if the child is of sufficient maturity) the child’s desires. *Id.* The name indicated on birth, baptismal, and health records has also been considered. *Id.* We review the trial court’s order in such cases under an abuse of discretion standard. *Id.* An abuse of discretion will be found only where the decision is clearly against the logic and effect of the facts and circumstances before the court or the court has misinterpreted the law. *Id.* We will view the evidence in the light most favorable to the judgment, without reweighing the evidence. *Id.*

The evidence presented at the hearing showed that J.J. was happily integrated into the Custodians’ family, whose last name is the same as J.J.’s. Moreover, J.J. and her biological

mother bear the same last name, a name by which J.J. is known in the community in which they live. The only countervailing evidence presented on this subject by I.Y. was that he wanted J.J.'s last name changed. This falls far short of establishing that a name change was in J.J.'s best interest. The trial court did not abuse its discretion in denying I.Y.'s request.

3.

I.Y. contends the trial court erred in denying his request to lower his support obligation.

We review the denial of a petition to modify child support under the clearly erroneous standard. The trial court's decision will be reversed only where it is clearly against the logic and effect of the facts and circumstances before the trial court. We do not reweigh evidence or judge witness credibility. Rather, we consider only the evidence most favorable to the judgment, together with the reasonable inferences that can be drawn from that evidence. The person seeking modification bears the burden of proving a substantial change in circumstances justifying modification.

Tirey v. Tirey, 806 N.E.2d 360, 363 (Ind. Ct. App. 2004) (internal citations omitted), *trans. denied*.

Pursuant to Ind. Code Ann. § 31-16-8-1(b) (West, PREMISE through 2007 1st Regular Sess.), a child support modification is appropriate “only upon a showing of changed circumstances so substantial and continuing as to make the terms unreasonable”, or upon a showing that “a party has been ordered to pay an amount in child support that differs by more than twenty percent (20%) from the amount that would be ordered by applying the child support guidelines” *and* the existing order was issued at least twelve months before the modification petition was filed.

In the instant case, I.Y. failed to demonstrate that the circumstances had changed such

that the existing order was unreasonable, or that application of the child support guidelines at the time of the hearing would yield a result that differed by more than twenty percent from the amount he was ordered to pay. Thus, the denial of I.Y.'s request for a support modification is not clearly erroneous.

4.

I.Y. contends the trial court erred in denying his request for an order directing the Custodians to provide an accounting of child support expenditures pursuant to Ind. Code Ann. § 31-1-11.5-13(e) (West, PREMISE through 2007 1st Regular Sess.). That statute provides:

At the time of entering an order for support, or at any time thereafter, the court may make an order, upon a proper showing of necessity requiring the spouse or other person receiving support payments to render an accounting to the court of future expenditures upon such terms and conditions as the court shall decree.

Although this provision reflects that the legislature has recognized that an accounting may be appropriate in some child support cases, it certainly does not require the trial court to order an accounting. *Olive v. Olive*, 650 N.E.2d 766 (Ind. Ct. App. 1995). Instead, the statute authorizes the trial court to issue such an order in its discretion upon a showing of necessity. Ind. Child Support Guideline 6. Indeed, “the authors of the Child Support Guidelines do not recommend that an accounting be ordered as a matter of routine.” *Olive v. Olive*, 650 N.E.2d at 767-68 (citing Child Supp. G. 6). Thus, we will not disturb a trial court’s decision regarding whether to order a custodial parent to render an accounting absent an abuse of discretion. *Olive v. Olive*, 650 N.E.2d 766.

It appears that the only basis of I.Y.’s request for an accounting is his desire to “know

how my money is spent to support my daughter.” *Appellant’s Brief* at 4. This is not the sort of necessity that justifies an order of accounting. The trial court did not err in denying this request.

5.

Finally, I.Y. contends the trial court erred in ordering him to be solely responsible for transportation for parenting time with J.J. and then failing to award him a credit for providing the transportation; in essence, I.Y. contends the trial court erred in failing to order the Custodians to share the cost of transportation with respect to his visitation with J.J. We review such rulings for an abuse of discretion. *A.G.R. ex rel. Conflenti v. Huff*, 815 N.E.2d 120 (Ind. Ct. App. 2004), *trans. denied*.

We note that the court did not categorically deny I.Y.’s request for sharing transportation costs. Rather, the court determined: “The Court further finds if [I.Y.] pays support on a regular basis then either the [Custodians] should reimburse him for half of his gas money to drive for visits or they should make arrangements to meet half way for exchange of the child for visitation.” *Appellant’s Appendix* at 14. It appears, then, that I.Y. has it within his means to obtain that which he seeks merely by getting and then staying current on his child support payments. Until he does so, it strikes us as inequitable to require the Custodians to help defray expenses I.Y. incurs related to J.J. while he contemporaneously fails to honor the same obligation to them. The trial court did not abuse its discretion in this regard.

Judgment affirmed.

BAILEY, J., concurs.

KIRSCH, J., dissenting with separate opinion.

**IN THE
COURT OF APPEALS OF INDIANA**

In the Matter of the Paternity of J.J.,)	
)	
I.Y.,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 54A01-0711-JV-512
)	
A.J.,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-0409-JP-197

KIRSCH, Judge, *dissenting*.

I respectfully dissent.

Here, we have a custody dispute between a natural parent and a third-party custodian.

The methodology in determining such a dispute was set out in *In re: Guardianship of L.L.*,

745 N.E.2d 222, 230 (Ind. Ct. App. 2001), *trans. denied*:

First, there is a presumption in all cases that the natural parent should have custody of his or her child. The third party bears the burden of overcoming this presumption by clear and cogent evidence. Evidence sufficient to rebut the presumption may, but need not necessarily, consist of the parent's present unfitness, or past abandonment of the child such that the affections of the child

and third party have become so interwoven that to sever them would seriously mar and endanger the future happiness of the child. However, a general finding that it would be in the child's "best interest" to be placed in the third party's custody is not sufficient to rebut the presumption. If the presumption is rebutted, then the court engages in a general "best interests" analysis. The court may, but is not required to, be guided by the "best interests" factors listed in Indiana Code Sections 31-14-13-2, 31-14-13-2.5, 31-17-2-8, and 31-17-2-8.5, if the proceeding is not one explicitly governed by those sections.

Here, the trial court did not follow this methodology, but looked only to the best interest standard. By doing so, I believe the court erred and that the error is of constitutional dimension.